FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPLICATION NO. 5917 OF 2004.

Bhagwan Narayan Bhoir. .. Applicant.
vs.
The State of Maharashtra. .. Respondent.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders. : Court's or Judge's orders :

Shri N.N., Gawankar with Smt. G.B. Nikam
for the applicant.
Shri K.V. Saste, A.P.P. for the State.

CORAM: V.M.KANADE,J.
DATED: 09.02.2005.

P.C.:

1. Heard Learned Counsel appearing on behalf of the applicant and the learned A.P.P. for the State.

2. The applicant was arrested by Murbad Police Station on 30.12.2002 in connection with offence registered at C.R. No.I- 251 of 2002. The prosecution case is that the applicant along with others had committed murder of one Madanlal Agrawal, Manager of Technograph Company at Murbad. The prosecution case is that the applicant and others had grudge against the said Agrawal as he was responsible for removing them from the company where they were working as workers. The prosecution case is that the applicant and others had informed

Nitin Telavane about their intention to commit murder of Madanlal Agrawal and thereafter assaulted him with sword and satoor. Two witnesses to the incident have stated that the applicant and others had covered their faces with cloth and the investigating officer directed the police constable K.M. Pardeshi by letter dated 14.12.2002 to interrogate the applicant and others in connection with the said offence. On perusal of the said letter, it indicates that investigation was initiated on the basis of the suspicion that the applicant and others were involved in the said offence. There is absolutely no eye -witness to the said incident. According to these two witnesses, who had seen the said offence, the applicant and others had covered their faces with cloth and. therefore, their identity could not be established. The only evidence against the applicant is the recovery of sword and blood stained pant.

3. The first application for bail was rejected by this Court by an order dated 22nd September 2003 on merits. Thereafter, second application was preferred being Criminal Application No.

1298 of 2004, which was allowed to be withdrawn with liberty to file fresh application by order dated 21st June 2004. Thereafter, application was preferred by one Chandrashekhar Dukha Pradhan vide Criminal Application No. 4020 of 2004 which was allowed by order dated 5th October 2004. Thereafter, two other applications were filed by other accused viz. J.D. Nayak and Raghunath Bhande. Both the said applications were allowed by order dated 12th November 2004.

4. Learned Counsel appearing for the appellant submitted that the applicant is in jail since 30th December 2002 and has already undergone more than 2 years in jail as an undertrial prisoner. He submitted that charge-sheet has been filed. He submitted that another application filed by the applicant and others was rejected on 22nd September 2003. Thereafter, other accused had filed fresh application which was allowed on 5th October 2004 and 12th November 2004 respectively and all the other accused have been now released on bail. He submitted that the present applicant is on par with accused No.1- Raghunath Bhande

and, therefore, on parity the applicant is entitled for grant of bail. He, therefore, submits that in view of this circumstance, this application has been filed by the applicant.

5. The learned Counsel for the applicant submitted that in the earlier application letter dated 14.10.2002 which was written by the Investigating Officer to the police constable was not brought to the notice of the Court when earlier application was heard. He submits that in view of this circumstance, applicant is entitled to be released on bail.

6. The learned A.P.P. for the State vehemently opposed these submissions. He submitted that the applicant had informed one of the witnesses, Nitin Telavane about his intention to commit murder of Shri Agrawal. He submitted that there was strong motive for committing the said offence and recovery of blood-stained clothes has been made at the instance of the applicant.,

7. In the instant case, it is an admitted position that there are no eye

witnesses to the incident as both the eye witnesses have stated that the accused had covered their faces with cloth. The investigation has been proceeded on the basis of the directions given by the investigating officer to the police constable to interrogate the applicant and others. Investigation, is therefore, proceeded on the basis that the applicant and others had strong motive to commit murder. It is difficult to rely on the sole statement of Nitin Telavane, particularly when, he was a contractor working for the Company. There is no reason why such statement would be made by the applicant and others to a person like Nitin Telavane. Further, other accused have been now released on bail. The applicant is in jail since last 2 years. In these circumstances, in my view, applicant is entitled to be released on bail.

8. The applicant be released on bail in the sum of Rs.5,000/- (five thousand) with one or two sureties in the like amount. The applicant shall, however, report to Murbnad Police Station twice in a month.

9. The trial Court shall not be influenced by any observations made by this Court while granting bail. The trial Court shall decide the case on the basis of the evidence adduced by the prosecution.

(V.M.KANADE,J)